nevertheless, of this distinction between territory under the control of the President and territory incorporated into the Union is manifestly far-reaching in other directions. The question of the insular cases as to the status of the islands expressly ceded to the United States by Spain under a treaty ratified by the Senate, is to be distinguished from that of the principal case.

Taxation of Costs against Prosecuting Witness. — It is provided by statute in many states that, where certain criminal proceedings, instituted by the filing of a complaint, result in the acquittal of the accused, the good faith of the complainant may be determined in the finding; and if it be found that the prosecution was malicious or without reasonable cause, the magistrate shall enter judgment against the complainant for costs. In general, the constitutionality of such enactments has been admitted without dispute, and, when made the subject of decision, it has been supported, but on reasoning which is far from satisfactory. It is said that the effect of the statutes is to declare that an unwarranted appeal to the criminal law is itself a violation of the law, and that the prosecuting witness is on that account subject to the penalty of paying the costs of the proceedings. *In re Ebenhack*, 17 Kan. 618; *State* v. *Cannady*, 78 N. C. 539. But if this be the true view, it would seem that the complainant is deprived of his property without due process of law. He is not a party to the suit; he may be denied the right to be represented by counsel, and if permitted to introduce evidence at all, the most important evidence on the question as to whether he acted with reasonable cause, may be fatally objectionable in a trial, where the guilt of the accused is the principal issue. However, when the complaining witness is allowed an appeal, on which his justification for instituting the proceedings is the sole issue, these objections disappear. *State* v. *Smith*, 65 Wis. 93. A recent decision in Nebraska, where, as is common, an appeal is not allowed, points out the difficulties with the view adopted by courts supporting the statutes, and holds a similar statute unconstitutional. *Rickley* v. *State*, 91 N. W. Rep. 867.

It seems, nevertheless, that the validity of such enactments may be upheld on other grounds. There is no constitutional guaranty to an individual of a right to institute criminal proceedings. This, however, is not to be understood as a denial of the right of an individual to compel the state, through its officers, to institute a prosecution. When, therefore, the legislature permits prosecutions by complaint, it is within its prerogative to impose such conditions as it may see fit on the exercise of the right which it grants. On this view the statutes in question would not be unconstitutional even if they made the mere acquittal of the accused sufficient ground for the taxation of costs; and the specification that the proceedings must be found to have been unwarranted is but a further limitation which, for reasons of policy, the legislature has put upon the exercise of its full prerogative. The means, therefore, for the determination of the question whether the complainant acted reasonably and without malice can be specified as the legislature chooses; and the complainant cannot object that he is deprived of property without due process of law, when the costs are taxed on the finding in a suit to which he is not a real party.

An examination of the grounds on which costs are taxed against an unsuccessful party to a civil suit is instructive in this connection. Reasonable conditions may be attached to the exercise of the right to invoke

the protection of the courts in civil causes; and it is but just that one who has brought an unsuccessful suit, or who has resisted a legal claim, should be required to pay the costs. PARSONS ON COSTS, 3. Similarly, the institution of criminal proceedings by an individual, when allowed, is a subject for proper regulation. It may be objected that the prosecuting witness is not a party to the suit, and so the analogy fails; but it would seem that the civil suitor, in so far as the question of the taxation of costs against him is concerned, has no more brought himself before the court than has the prosecuting witness who files his complaint. But though the conditions attached to an appeal to the courts in matters of private right cannot be extended so as virtually to deprive the suitor of the courts' protection, the imposition of conditions on which the institution of criminal suits by individuals is permitted, finds its only limit in the same policy which moves the legislature to allow such a proceeding.

CONTRACTS TO EMPLOY ONLY UNION LABOR. — A novel situation presented to the New York Supreme Court opens a wide field for discussion. A contractor had agreed to employ members of the plaintiff union and no others on all jobs of stone work of a certain character. This he failed to do, and the plaintiff moved for an injunction *pendente lite* to restrain him from employing other stone workers. The motion was dismissed on the ground that the plaintiff's damage was merely the loss of wages to its members and could be adequately estimated at law. *Stone, etc., Union* v. *Russell*, 38 N. Y. Misc. 513.

This statement as to the plaintiff's damages is certainly inaccurate. Whether or no the union does suffer a loss exactly corresponding to the loss of its members in wages — at least a doubtful question — it does lose prestige in addition. As the chief object of the agreement not to employ men outside the plaintiff union was to increase the union's influence and prestige, to allow the defendant to break this contract is completely to defeat the object for which it was made, and to cause injury for which a money compensation is quite inadequate. Of course the obvious retort is that in the analogous cases of libel and slander pecuniary compensation for injured reputation is considered sufficient. This is true, but the fact remains that oftentimes in reality it is *not* sufficient. However, after the holdings in *Marlin Fire Arms Co.* v. *Shields*, 171 N. Y. 384, and *Roberson* v. *Rochester, etc., Co.*, 171 N. Y. 538, it was not open to this court to declare, with any show of consistency, that damage to a union's prestige could not be adequately recompensed at law. Another point in the plaintiff's favor is that an express negative stipulation was broken. Though this fact could hardly sway an American court, it would be well-nigh decisive in England. *Donnell* v. *Bennett*, L. R. 22 Ch. D. 835. But see 15 HARV. L. REV. 480.

Strong as the above considerations appear, the reasons on the other side are even more convincing. First, the unanimous weight of authority has held this sort of injury to be easily ascertainable and capable of adequate compensation at law. Second, there was nothing in the nature of the plaintiff's services or in the employment offered by the defendant so peculiar or unique as to demand the aid of equity. Third, a sound public policy requires that the parties be left to their rights at law. Such a contract as this has a direct tendency to stifle competition; and though it could hardly be considered illegal as in restraint of trade, it is just the sort of dangerous agree-